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SILVERBROOK RESEARCH PTY LTD
393 DARLING STREET
BALMAIN NSW 2-041 AU AUSTRALIA

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JUL 17 2006

OFFICE OF PETITIONS

In re Application of	:	
Kia Silverbrook	:	
Application No. 09/900,160	:	DECISION ON PETITION
Filed: July 9, 2001	:	UNDER 37 C.F.R. §1.181
Attorney Docket No.: YU128US	:	
Title: INK JET PRINTHEAD THAT	:	
INCORPORATES AN ETCH STOP LAYER	:	

This is a decision on the petition filed June 24, 2002, pursuant to 37 C.F.R. §1.181, requesting that the holding of abandonment in the above-identified application be withdrawn.

The Office regrets the period of delay in issuing this decision.

The above-identified application became abandoned for failure to file a proper response to the Restriction Requirement, mailed November 7, 2001, which set a shortened statutory period to reply for one month. No extensions of time under the provisions of 37 C.F.R. §1.136(a) were received. Accordingly, the above-identified application became abandoned on December 8, 2002. A Notice of abandonment was mailed on May 20, 2002.

With the present petition, Petitioner has alleged that the mailing was not received. The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner stating that the Office communication was not received by the practitioner and attest to the fact that a search of the file jacket and docket records indicates that the Office communication was not received. In addition, a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement¹.

¹ See MPEP 711.03(c).

Petitioner has met the requirements of Delgar v. Schuyler, 172 USPQ 513 (D.D.C. 1971), in that it has been asserted that both the file jacket and the docket record have been searched, and a copy of the latter has been included.

Considering the facts and circumstances of the delay at issue, as set forth on petition, it is concluded that Petitioner has met his burden of establishing that the mailing was not received.

Accordingly, the petition under 37 C.F.R. §1.181(a) is GRANTED. The holding of abandonment is WITHDRAWN.

The Technology Center will be notified of this decision. The Technology Center's support staff will mail a new Restriction Requirement. The one-month extendable time period for electing an invention to be examined will be set to run from the mailing date of the Office action.

Telephone inquiries regarding this decision should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanowski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office